



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/10953/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 20th December 2018**

**Decision & Reasons Promulgated
On 11th February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MR MD ASFAK HOSSAIN TAREK
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Wilcox of Counsel, Universal Solicitors

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant born on 1st January 1987 is a citizen of Bangladesh. The Appellant was represented by Mr Wilcox of Counsel. The Respondent was represented by Mr Wilding a Senior Presenting Officer.

Substantive Issues Under Appeal

2. The Appellant had entered the United Kingdom and made an application for asylum that was refused by the Respondent on 31st August 2018. The Appellant appealed that decision and his appeal was heard at Taylor House on 12th October 2018 before First-tier Tribunal Judge Talbot. The judge dismissed the appeal on all grounds. Application for permission to appeal was made on 6th November 2018 and granted on 12th November 2018. It was said that it was arguable that there was a perversity between the evidence at paragraph 16 of the judge's decisions and the findings that he made at paragraph 30. It was said that that may have affected the issue of credibility in respect of the history of claimed political activity in Bangladesh before entry to the United Kingdom. Directions were issued for the matter to be heard by the Upper Tribunal on the question of an error of law and the matter comes before me in accordance with those directions.

Submissions on Behalf of the Appellant

3. Mr Wilcox firstly noted that the interpreter had been requested to translate a particular document in which it was said there was an oddity surrounding the Appellant's name and that the judge should have exercised anxious scrutiny by going through all documents to see if other problems had arisen that may have disclosed an error in the original translation. Secondly it was said that there was a discrepancy between the evidence noted by the judge at paragraph 16 in respect of Mr Hussain's evidence that she had met the Appellant in Bangladesh when he was clearly in a position of some responsibility and thereafter the judge's finding at paragraph 30. Finally, it was said that there should have been more anxious scrutiny on the sur place activities. It was noted that there was no country guidance case for Bangladesh on this matter and no guidance that simply low-level activity did not present a risk on return to Bangladesh. It was submitted that potentially this case was suitable to be listed as a country guidance case on this particular point.

Submissions on Behalf of the Respondent

4. In respect of the newspaper article it was said that the Appellant could have objected to the procedure of using the interpreter and it was conceded there was a discrepancy. It was further said that the judge had come to conclusions on the photographs which had been provided as part of the evidence and had given reasons in respect of those photographs. In respect of the core matter namely the alleged discrepancy between paragraphs 16 and 30 it was noted that Mr Hussain the witness had met the Appellant only once in Bangladesh. The Appellant's case was that he was politically active in Bangladesh and Mr Hussain's evidence did not go beyond meeting the Appellant on one occasion. It was said that that alleged discrepancy did not say the day for the Appellant in terms of his alleged political involvement in Bangladesh. In respect of the final matter it was submitted that the suggestion was that because there was no country guidance case on this particular issue the sur place activities that seemed to indicate an error of law on behalf of the judge. It was

submitted that the evidence before the judge did not establish a risk to the Appellant and it was for the Appellant to produce evidence to show he was at risk if that was his case.

5. In resubmissions it was further emphasised that it was dangerous to say that the Appellant was not involved in politics given the presence of Mr Hussain's evidence.
6. At the conclusion of the hearing I reserved my decision to consider the submissions and evidence in this case. I now provide that decision with my reasons.

Decision and Reasons

7. The judge had set out at paragraphs 5 to 16 a summary of the evidence provided by the Appellant and his three witnesses. He had further set out the main features of the Home Office refusal letter and the submissions raised by both representatives.
8. The Appellant had within his bundle produced part of a Bengali newspaper article referring to a number of BNP leaders and their roles. However, it was only part of the article. The judge noted at paragraph 23 that the Presenting Officer found at the hearing the complete article on the internet. That was shown to the Appellant and the court interpreter was asked to translate the list of names of the BNP leaders. That produced a discrepancy, which as the judge noted, related to the Appellant and was the sole discrepancy in a long list of names. The judge found that that discrepancy in the Bengali original and English translation produced by the Appellant within his bundle, when compared to the full article was not merely error or coincidence and found that to be an adverse feature in the Appellant's case.
9. There is no suggestion within the decision that there was any objection raised at the hearing by the Appellant's Counsel to the production of the full article by the Presenting Officer or the translation of the list at the hearing. The Appellant himself had introduced the article but only partially within his own bundle. The discrepancy was put to the Appellant so he was provided with an opportunity to comment or explain upon the matter. If it was felt appropriate to examine more closely translations of other documents as suggested in submissions to me that course of action could have been proposed at the hearing. The production of the evidence on the day by the Presenting Officer using the internet and the translation thereafter by the court interpreter was perhaps a little unusual but did not produce any objections and it is hard to see that it was a material error on the part of the judge.
10. However, the judge did not rely upon that point alone in terms of his adverse credibility findings. At paragraphs 24 to 32 he gave clear reasons why he found the Appellant's evidence in a number of ways to lack credibility. He had specifically referred to the evidence of the three

witnesses. At paragraph 30 he began by stating he found the value of their evidence limited in terms of the Appellant's claimed activities in Bangladesh. In respect of Mr Hussain he accurately noted at paragraph 30 the evidence that Mr Hussain had only met the Appellant once in Bangladesh and he did not have direct knowledge of the alleged incidents involving the Appellant. He further noted in paragraph 30 that of the three witnesses he found Mr Faruk the most credible. It is the case that in his assessment of that which Mr Hussain could say at paragraph 30 he did not reference the political position Mr Hussain had ascribed to the Appellant as noted by the judge at paragraph 16. It may be the judge erred in not commenting upon that aspect of Mr Hussain's evidence and whether he regarded Mr Hussain's evidence on that point to be credible, reliable or not (particularly bearing in mind his assessment of credibility of the three witnesses). However, it is clear the judge had looked at all of the evidence both oral and documentary and had provided a number of not insignificant reasons why he did not accept the Appellant's account. Accordingly, if the issue regarding Mr Hussain was an error it was not material.

11. The judge had assessed evidence relating to sur place activities. He accepted at paragraph 32 that the Appellant had been involved in the UK with the Bangladeshi Student Union (BSU), but had sought to embellish that evidence and found he did not have a high profile. He gave reasons for reaching that finding clearly set out in the decision. He had examined country material and reached a finding principally set out at paragraph 36 that given his findings of fact and credibility and after an examination of all the evidence there was no real risk to the Appellant on return to Bangladesh based on his sur place activities such as they were. He was entitled to reach that finding. The fact that there may be no country guidance case on this issue is of no consequence. It was neither a perverse or unreasonable finding to make based on all the evidence available to the judge.

Notice of Decision

12. There was no material error of law made by the judge in this case. I uphold the decision of the First-tier Tribunal.

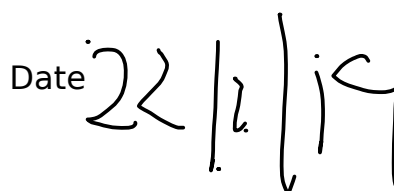
No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Lever

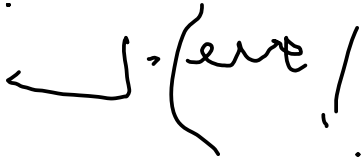
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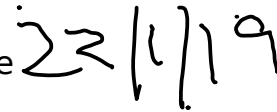
TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

A handwritten signature in black ink, appearing to read "J. Lever". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke.

Date

A handwritten date in black ink, "22/1/19". The numbers are written in a simple, slightly slanted font.

Deputy Upper Tribunal Judge Lever